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Clarke v. Latimer Clerk's Record Dckt. 45012

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MICHAEL CLARKE and SUE CLARKE,
individually and as husband and wife;

Supreme Court Case No. 45012

Plaintiffs-Appellants,

vs.

HOLLY LATIMER,

Defendant-Respondent.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE SAMUEL A. HOAGLAND

ERIC R. CLARK

BRIAN L. WEBB

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

EAGLE, IDAHO

EAGLE, IDAHO

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV-OC-2015-21143

Michael Clarke, Sue Clarke
vs.
Holly Latimer

§
§
§
§

Location: Ada County District Court
Judicial Officer: Hoagland, Samuel
Filed on: 12/14/2015

CASE INFORMATION

Case Type: AA- All Initial District Court Filings (Not E, F, and H1)

DATE	CASE ASSIGNMENT
------	-----------------

Current Case Assignment

Case Number	CV-OC-2015-21143
Court	Ada County District Court
Date Assigned	12/14/2015
Judicial Officer	Hoagland, Samuel

PARTY INFORMATION

Plaintiff	Clarke, Michael	Clark, Eric Robert <i>Retained</i> 208-830-8084(W)
	Clarke, Sue	Clark, Eric Robert <i>Retained</i> 208-830-8084(W)
Defendant	Latimer, Holly	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
------	------------------------------	-------

12/14/2015	New Case Filed Other Claims <i>New Case Filed - Other Claims</i>	
12/14/2015	Complaint Filed <i>Complaint Filed</i>	
12/14/2015	Summons Filed <i>Summons Filed</i>	
12/14/2015	Motion <i>Ex Parte Motion For Order Authorizing Personal Service Outside The State of Idaho</i>	
12/14/2015	Affidavit in Support of Motion <i>Affidavit In Support Of Ex Parte Motion For Order Authorizing Personal Service Outside the State of Idaho</i>	
12/15/2015	Order <i>Order Granting Ex Parte Motion for Order Authorizing Personal Service Outside the State of Idaho</i>	
02/01/2016	Return of Service <i>Return Of Service 1/19/2016</i>	
02/10/2016	Notice of Appearance <i>Special Appearance to Contest Personal Jurisdiction IRCP 4(i)(2)</i>	
02/26/2016	Notice of Intent to Take Default	

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV-OC-2015-21143

3 Day Notice Of Intent To Take Default

02/29/2016	Hearing Scheduled <i>Hearing Scheduled (Scheduling Conference 04/01/2016 02:00 PM)</i>
02/29/2016	Motion <i>Motion to Dismiss</i>
02/29/2016	Memorandum <i>Memorandum in Support of Motion to Dismiss</i>
02/29/2016	Notice <i>Notice of Scheduling Conference</i>
03/02/2016	Objection <i>Plaintiff's Objection to Defendant's Motion to Dismiss</i>
03/03/2016	Motion <i>Motion to Extend Time for Filing Rule 12 (b)(2) Motion</i>
03/03/2016	Memorandum <i>Memorandum in Support of Motion to Extend Time for Filing Rule 12 (b)(2) Motion</i>
03/07/2016	Objection <i>Plaintiff's Objection to Defendant's Request for an Extension to File Motion to Dismiss</i>
03/22/2016	Notice of Hearing <i>Notice Of Hearing Re: Plaintiffs Objection To Defendants Motion To Dismiss, and Plaintiffs Objection to Defendants Request For An Extension To File Motion To Dismiss</i>
03/22/2016	Notice of Hearing <i>Notice Of Hearing (04/05/16)</i>
03/22/2016	Hearing Scheduled <i>Hearing Scheduled (Motion 04/05/2016 04:00 PM) Motion To Extend Time For Filing Rule 12 (b)(2) Motion And Motion To Dismiss</i>
03/23/2016	Continued <i>Continued (Scheduling Conference 04/05/2016 04:00 PM)</i>
03/28/2016	Response <i>Plaintiff's Response to Defendant's Motion to Dismiss</i>
04/01/2016	Reply <i>Defendant's Reply to Plaintiffs' Response to Defendant's Motion to Dismiss</i>
04/05/2016	CANCELED Scheduling Conference (4:00 PM) (Judicial Officer: Hoagland, Samuel) <i>Vacated</i>
04/05/2016	Motion Hearing (4:00 PM) (Judicial Officer: Hoagland, Samuel) <i>Motion To Extend Time For Filing Rule 12(b)(2) Motion And Motion To Dismiss Hearing result for Motion scheduled on 04/05/2016 04:00 PM: District Court Hearing Held Court Reporter: Christy Olesek Number of Transcript Pages for this hearing estimated: less than 100</i>
04/06/2016	Order <i>Order</i>
04/06/2016	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Motion scheduled on 04/05/2016 04:00 PM: District Court Hearing Held Court Reporter: Christy Olesek</i>

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE No. CV-OC-2015-21143

Number of Transcript Pages for this hearing estimated: less than 100

04/06/2016 Hearing Vacated
Hearing result for Scheduling Conference scheduled on 04/05/2016 04:00 PM: Hearing Vacated

04/06/2016 Hearing Scheduled
Hearing Scheduled (Court Trial 02/06/2017 09:00 AM)

04/06/2016 Hearing Scheduled
Hearing Scheduled (Status Conference 02/06/2017 08:30 AM)

04/06/2016 Hearing Scheduled
Hearing Scheduled (Pretrial Conference 01/04/2017 03:00 PM)

04/06/2016 Stipulation
Stipulation for Scheduling

04/08/2016 Scheduling Order
Scheduling Order

04/18/2016 Notice of Service
Notice Of Service Of Plaintiff's First Set Of Discovery To Defendant

04/18/2016 Answer
Answer To Complaint (Brian Webb For Holly Latimer)


05/18/2016 Notice of Service
Notice Of Service of Defendant Holly Latimer's Response to PLaintiff's First Set of Discovery to Defendant

07/01/2016 Motion
Motion to Dismiss

07/01/2016 Memorandum
Memorandum in Support of Motion to Dismiss


07/01/2016 Notice of Hearing
Notice Of Hearing re Motion to Dismiss (8.10.16@4pm)

07/01/2016 Hearing Scheduled
Hearing Scheduled (Motion to Dismiss 08/10/2016 04:00 PM)


07/25/2016  Miscellaneous
Plaintiffs Response To Defendants Second Motion To Dismiss

07/27/2016 Reply
Reply to Plaintiffs' Response to Defendant's Second Motion to Dismiss


08/05/2016 Notice of Service
(Served 8/5/2016)


08/08/2016  Notice of Service
of Plaintiffs' Second Set of Discovery


08/10/2016 **Motion to Dismiss (4:00 PM)** (Judicial Officer: Hoagland, Samuel)


09/06/2016  Order
(Denying Motion to Dismiss)


ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE No. CV-OC-2015-21143


09/07/2016  Notice of Service
of Defendant Holly Latimer's Response to Plaintiffs' Second Set of Discovery to Defendant


10/07/2016  Notice of Service
NOTICE OF SERVICE OF PLAINTIFFS' THIRD SET OF DISCOVERY TO DEFENDANT


10/07/2016  Witness Disclosure
Plaintiffs Disclosure of Lay Witnesses For Trial


11/01/2016  Notice of Service
of Defendant's First Set of Interrogatories and Request for Production of Documents to Plaintiffs


11/04/2016  Witness Disclosure


11/07/2016  Notice of Hearing
Notice of Hearing 12/6/16 @4:00pm


11/07/2016  Motion
Motion to Dismiss


11/07/2016  Memorandum
Memorandum in Support of Motion Dismiss


11/08/2016  Objection
and Motion to Strike 2nd Motion to Dismiss as Untimely


11/08/2016  Notice of Service
of Amended Third Set of Discovery to Defendant


11/10/2016  Response
Defendant's Response to Plaintiffs' Objection and Motion to Strike Defendant's Second Motion to Dismiss


11/10/2016  Motion
Motion to Amend Scheduling Order

11/14/2016  Objection
PLAINTIFFS' OBJECTION TO MOTION TO AMEND SCHEDULING ORDER


11/16/2016  Amended
Amended Notice of Hearing


11/16/2016  Notice of Hearing


11/18/2016  Motion
Plaintiffs' Motion for Judicial Notice


11/18/2016  Notice of Hearing
(12.09.2016 @ 1:00 PM)


ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE No. CV-OC-2015-21143

11/18/2016  Declaration
Plaintiffs; Declaration in support of Motion for Judicial Notice and in Opposition to Defendant's Motion to Dismiss


11/28/2016  Notice of Service of Discovery Requests
to Supplement Discovery

12/02/2016  Objection
Defendant's Objection to Plaintiffs' Motion for Judicial Notice


12/02/2016  Response
Defendant's Response to Plaintiffs' Objection to Defendant's Motion to Amend Scheduling Order


12/05/2016  Reply
PLAINTIFFS REPLY BRIEF IN SUPPORT OF THEIR OBJECTION AND MOTION TO STRIKE DEFENDANT S SECOND MOTION TO DISMISS


12/06/2016 **CANCELED Motion to Dismiss (4:00 PM)** (Judicial Officer: Hoagland, Samuel)
Vacated


12/07/2016  Notice
Notice of Service of Defendant Holly Latimer's Response to Plaintiffs' Amended Third Set of Discovery to Defendant


12/09/2016 **Motion to Amend (1:00 PM)** (Judicial Officer: Hoagland, Samuel)
Scheduling Order & Motion To Dismiss


12/09/2016  Court Minutes


12/14/2016  Order
re: Defendant's Motion to Dismiss


12/16/2016  Pretrial Memorandum
Plaintiffs' Pretrial Memorandum


12/16/2016  Notice
Plaintiffs' Disclosure of Exhibits for Trial

12/27/2016  Exhibit List/Log
Plaintiffs' Supplemental Disclosure of Exhibits for trial

12/29/2016  Notice of Hearing
(1/13/17 at 330pm)

12/29/2016  Motion
In Limine

12/29/2016  Memorandum In Support of Motion
Defendant's Motion in Limine

12/29/2016  Pretrial Memorandum


ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV-OC-2015-21143

Defendant's

12/29/2016  Exhibit List/Log
Defendant's Disclosure of Proposed Exhibits for Trial


01/04/2017 **Pre-trial Conference (3:00 PM)** (Judicial Officer: Hoagland, Samuel)

01/04/2017  Court Minutes

01/04/2017  Findings of Fact and Conclusions of Law
Defendant's Proposed Findings of Facts and Conclusions of Law

01/04/2017  Miscellaneous
Defendant's Proposed Witness List and Summary of Testimony

01/04/2017  Findings of Fact and Conclusions of Law
Plaintiffs' Proposed

01/06/2017  Response
Plaintiffs' Response to Defendant's Motion in Limine


01/13/2017 **Motion in Limine (3:30 PM)** (Judicial Officer: Hoagland, Samuel)

01/13/2017  Court Minutes

02/03/2017  Miscellaneous
Plaintiffs' Second Supplementla Exhibit List

02/06/2017 **CANCELED Status Conference (8:30 AM)** (Judicial Officer: Hoagland, Samuel)
Vacated

02/06/2017 **Court Trial (9:00 AM)** (Judicial Officer: Hoagland, Samuel)

02/06/2017  Court Minutes

02/06/2017  Exhibit List/Log

02/08/2017  Motion
Plaintiffs' Motion to Supplement/Correct the Record

02/08/2017  Declaration
Plaintiffs' Declaration in support of Motion to supplement/correct the record

03/17/2017  Findings of Fact and Conclusions of Law
Following Court Trial


03/20/2017  Objection
to Findings of Fact and Conclusions of Law


03/20/2017  Notice of Hearing

03/21/2017  Notice of Hearing


ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV-OC-2015-21143


Re: Motion to Supplement/correct record at trial (5/24/17 @ 3 p.m)


03/24/2017  Notice of Service
First Set of Post Judgment Discovery


03/27/2017  Judgment
(\$252,868.41)


03/27/2017 **Final Judgment** (Judicial Officer: Hoagland, Samuel)
Monetary/Property Award
In Favor Of: Clarke, Michael; Clarke, Sue
Against: Latimer, Holly
Entered Date: 03/27/2017
Current Judgment Status:
Status: Active
Status Date: 03/27/2017
Monetary Award:
Amount: \$252,868.41

03/28/2017  Motion
Plaintiffs' Motion for Prejudgement Interest


03/28/2017  Declaration
Declaration is support of Motion for Prejudgment Interest


03/28/2017  Memorandum
Memorandum in Support of Motion for Prejudgment Interest

03/29/2017  Notice of Hearing
Re: Motion for Prejudgment Interest (4/26/17 at 3 pm)


04/10/2017  Notice of Appeal


04/10/2017 Appeal Filed in Supreme Court


04/12/2017  Notice
of Withdrawal of Objection to Findings of Facts and Conclusions of Law


04/24/2017  Notice of Service
Of Defendant's Responses to Plaintiffs' First Set of Post-Judgment Discovery to Defendant

04/26/2017 **Motion Hearing** (3:00 PM) (Judicial Officer: Hoagland, Samuel)
Prejudgment Interest




04/27/2017  Amended Notice of Appeal

04/27/2017  Notice
of Filing Partial Satisfaction of Judgment and Notice of Objection and Protest

05/02/2017  Motion
to Augment the Record

05/17/2017  Order
Granting Motion to Augument the Record

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE No. CV-OC-2015-21143

05/17/2017	 Notice of Withdrawal of Attorney
05/17/2017	 Amended <i>Amended Notice of Withdrawal of Attorney</i>
05/24/2017	CANCELED Objection Hearing (3:00 PM) (Judicial Officer: Hoagland, Samuel) <i>Vacated</i> <i>Plaintiff's Objection to Findings of Fact & Conclusions of Law Following Court Trial</i>
06/13/2017	 Notice <i>of Transcript of 18 Pages Lodged - Supreme Court No. 45012</i>

DATE	FINANCIAL INFORMATION	
	Defendant Latimer, Holly	
	Total Charges	136.00
	Total Payments and Credits	136.00
	Balance Due as of 6/13/2017	0.00
	Plaintiff Clarke, Michael	
	Total Charges	450.00
	Total Payments and Credits	450.00
	Balance Due as of 6/13/2017	0.00
	Plaintiff Clarke, Sue	
	Total Charges	0.00
	Total Payments and Credits	0.00
	Balance Due as of 6/13/2017	0.00

DEC 14 2015

CHRISTOPHER D. RICH, Clerk
By HALEY MYERS
DEPUTY

ERIC R. CLARK, Esq.
CLARK & ASSOCIATES, ATTORNEYS
P.O. Box 2504
Eagle, ID 83616
Office: 208-830-8084
Fax: 208-939-7136
Idaho State Bar No. 4697

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael CLARKE, and Sue Clarke,
individually and as husband and wife,

Plaintiffs,

vs.

Holly LATIMER,

Defendant.

Case No. CV – OC **CV OC 1521143**

COMPLAINT

The Plaintiffs, by and through counsel, hereby file their complaint, and complain and alleges as follows:

INTRODUCTION

1. This is a fraudulent transfer to avoid creditor's case.

PARTIES AND JURISDICTION

2. At all times relevant to these proceedings, the Plaintiffs ("the Clarkes") resided in Owyhee County, Idaho.
3. The Defendant Holly Latimer is an individual who resides in Hawaii.

4. Jurisdiction is proper according to I.C. § 5-514, Idaho's Long Arm Statute.
5. Jurisdiction in the District Court is proper as the claim exceeds \$10,000, the statutory minimum for this Court.

FACTS AND ALLEGATIONS

6. Holly Latimer is married to Zachary Van Latimer and has been married to Mr. Latimer at all times relevant to this proceeding.

7. In March 2012, the Clarkes obtained a judgment in Ada County Case No. CV-OC-1019701 against Mr. Latimer as a result of Mr. Latimer's fraudulent investment schemes. District Judge Wilper entered judgment for the Clarke's totaling **\$7,405,256.44**. The current judgment amount exceeds \$16,000,000.00.

8. In March 2008 and again in September 2008, the Clarke's made two investments with Mr. Latimer totaling \$1,000,000.00.

9. Before and after the Clarke's obtained their judgment, Latimer had his employer deposit his paychecks into accounts in the name of several of Latimer's fictitious entities. Latimer opened and used these bank accounts in the name of fictitious entities in an attempt to avoid levy and attachment.

10. Since 2011, Mr. Latimer has been fraudulently transferring the Clarke's money to his wife, defendant Holly Latimer, from these accounts each time Latimer received a paycheck or a bonus payment.

COUNT ONE – FRAUDULENT TRANSFERS

11. The Clarke's refer to and re-allege all prior paragraphs as if set forth herein.

12. The Clarke's claims arose against Mr. Latimer in March 2008 for \$500,000.00 and in September 2008 for \$500,000.00 against Mr. Latimer.

13. Holly Latimer is an "insider" as defined by Idaho's Uniform Fraudulent Transfer's Act.

14. Holly Latimer was aware of the Clarke's claims and the Clarke's judgment.

15. Each transfer that Mr. Latimer made to Holly Latimer was made without any consideration and with the actual intent to hinder, delay, or defraud Mr. Latimer's creditors, including the Clarke's.

16. Once Mr. Latimer fraudulently transferred these funds, he had access to these funds in his wife's accounts.

17. Mr. Latimer was insolvent due to the Clarke's judgment.

16. The Clarke's believe that Mr. Latimer transferred a minimum of \$2,000 each week to Holly Latimer since Mr. Latimer began his employment with his current employer in September 2011.

17. As a direct and proximate result of these fraudulent transfers received by Holly Latimer, the Clarke's have suffered damages of at least \$320,000.00 including prejudgment interest accumulating since 2011.

18. The Clarke's reserve the right to seek to amend this complaint to include a claim for punitive damages.

ATTORNEY FEES

19. The Clarkes were forced to hire and retain legal counsel to pursue this claim and is therefore entitled to attorney fees according to contract, to Idaho Code §§ 12-120, 12-121, and the Idaho Rules of Civil Procedure, if they prevail in this action.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against the Defendant as follows:

1. For Judgment against Defendant Holly Latimer for \$320,000.00 plus prejudgment interest;

2. For Judgment requiring the Defendant Holly Latimer to pay attorney fees and litigation costs to the Plaintiffs of not less than \$10,000.00 in the event default is obtained and default judgment is entered, and the actual amount of attorney fees and litigation costs the Plaintiffs incur if this matter is contested;

3. For such other relief the Court determines is appropriate and proper under the circumstances.

DATED this 7th day of December 2015.

CLARK & ASSOCIATES, ATTORNEYS



Eric R. Clark
For the Plaintiffs

TIME RECEIVED
April 18, 2016 2:54:29 PM MDT

REMOTE CSID

DURATION
104

PAGES
4

STATUS
Received

FROM: TO:2876919 04/18/2016 15:08:00 #39315 P.001/004

ORIGINAL

NO. _____
A.M. _____ FILED P.M. 419

APR 18 2016

CHRISTOPHER D. RICH, Clerk
By **KATRINA HOLDEN**
DEPUTY

Brian L. Webb
Michael C. McClure
BRIAN WEBB LEGAL
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616
Telephone: (208) 331-9393
Facsimile: (208) 331-9009
Webb ISB: 7448
McClure ISB: 8439

Attorney for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

MICHAEL CLARK, AND SUE CLARK,
individually and as husband and wife,

Plaintiffs,

vs.

HOLLY LATIMER,

Defendant.

Case No. CV OC 15-21143

ANSWER TO COMPLAINT

The Defendant, Holly Latimer ("Latimer"), by and through her attorney of record, Brian Webb Legal, answers the Plaintiffs' Complaint as follows:

ANSWER

1. Latimer denies each and every allegation contained in the Plaintiffs' Complaint that is not specifically admitted herein.
2. Latimer denies the allegations contained in paragraph 1 of the Plaintiffs' Complaint.
3. Latimer lacks sufficient knowledge to admit or deny paragraph 2 of the Plaintiffs' Complaint and therefore denies the same.

KE

4. Latimer admits the allegations contained in paragraph 3 of the Plaintiffs' Complaint.

5. Latimer denies the allegations contained in paragraph 4 of the Plaintiffs' Complaint.

6. Latimer admits the allegations contained in paragraphs 5 and 6 of the Plaintiffs' Complaint.

7. Latimer lacks sufficient knowledge to admit or deny the allegations contained in paragraphs 7, 8 and 9 of the Plaintiffs' Complaint and therefore denies the same.

8. Latimer denies the allegations contained in paragraph 10 of the Plaintiffs' Complaint.

9. Latimer lacks sufficient knowledge to admit or deny the allegations contained in paragraph 12 of the Plaintiffs' Complaint and therefore denies the same.

10. Latimer denies the allegations contained in paragraph 13 in that it calls for a legal conclusion.

11. Latimer admits the allegations contained in paragraph 14 of the Plaintiffs' Complaint to the extent that she knew her husband had been sued and that there was a judgment against him.

12. Latimer denies the allegations contained in paragraphs 15 and 16 of the Plaintiffs' Complaint.

13. Latimer denies the allegations contained in paragraph 17 in that it calls for a legal conclusion.

14. Latimer lacks sufficient knowledge to admit or deny the allegations contained in paragraph 16 (this is the second paragraph 16 in Plaintiffs' Complaint) of the Plaintiffs' Complaint and therefore denies the same.

15. Latimer denies the allegations contained in paragraphs 17 (this is the second paragraph 17 in Plaintiffs' Complaint) and 18 of the Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

1. This Court lacks personal jurisdiction over Latimer and the Plaintiffs' Complaint should be dismissed.

2. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted and should therefore be dismissed.

3. The Plaintiffs' claim(s) are barred by the doctrines of waiver and estoppel.

4. The Plaintiffs' claim(s) are barred by the doctrine of laches.

5. The Plaintiffs' claim(s), in part, are barred by the statute of limitations outlined in Idaho Code § 55-918.

6. The Plaintiffs' claim(s) should be dismissed because, even if the transfers were acknowledged as fraudulent, the Plaintiffs are pursuing exempt property.

7. As of the date of this Answer, and without the benefit of full discovery, Latimer is unable to fully state in complete detail all of the affirmative defenses that may exist with respect to the Plaintiffs' Complaint. Consistent with Rule 11 of the Idaho Rules of Civil Procedure, Latimer has asserted the affirmative defenses that are presently known to her and believed to be applicable. Latimer reserves the right to assert additional affirmative defenses if discovery reveals that other defenses are available.

PRAYER

1. That Plaintiffs' Complaint and each cause of action or claim stated therein be dismissed, with prejudice, with Plaintiffs taking nothing thereby;


2. That, upon dismissal of the Plaintiffs' Complaint, Latimer be awarded their costs and attorney's fees in pursuing the defense of this action as provided by Idaho Code §§ 12-120(3) and 12-121 and Rule 54 of the Idaho Rules of Civil Procedure;

3. That, to the extent a jury trial is proper in this matter, Latimer's request for a jury trial be granted; and

4. For such other and further relief as the Court may deem just and proper.

DATED this 18TH day of April 2016.

BRIAN WEBB LEGAL



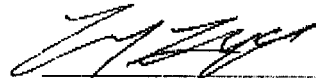
Michael C. McClure
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2016, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to those parties marked served below:

Plaintiffs Eric R. Clark
CLARK & ASSOCIATES
PO Box 2504
Eagle, ID 83616
FAX (208) 939-7136

U.S. Mail, Postage Paid
 Hand Delivered
 Fax Transmittal



Michael C. McClure

EXHIBIT LIST

Samuel A . Hoagland/ Stephanie Hardy
Judge Clerk

DATE: February 6, 2017

DISPOSITION: Court Trial
CASE NO. CV-OC-2015-21143

Michael Clarke	Eric Clark
Sue Clarke	
Plaintiff	Attorney(s)

vs.

Holly Latimer	Brian Webb
	Mike McClure
Defendant	Attorney(s)

BY	NO.	DESCRIPTION	STATUS
Plaintiff	1	Judgment against Zach Latimer	Admitted 2/6/17
Plaintiff	2	IDOF's Default Judgment	Admitted 2/6/17
Plaintiff	3	Hawaii Bankruptcy Court Judgment 1 & 2	Admitted 2/6/17
Plaintiff	4	Zach Latimer's VVL, LLC Monthly Statements	Admitted 2/6/17
Plaintiff	5	Zach Latimer's Z.V. Latimer, Inc. Monthly statements	Admitted 2/6/17
Plaintiff	6	Zach Latimer's Bank of Hawaii Monthly Statements	Admitted 2/6/17
Plaintiff	7	Holly Latimer's Wells Fargo Monthly Statement #1325	Admitted 2/6/17
Plaintiff	8	Holly Latimer's Wells Fargo Monthly Statement #3886	Admitted 2/6/17
Plaintiff	9	Holly Latimer's Bank of Hawaii monthly statements	Admitted 2/6/17
Plaintiff	10	Exhibit showing Transfers and Amount	Illustrative 2/6/17
Plaintiff	11	Hawaii Credit Union Statements	Admitted 2/6/17
Plaintiff	12	Zach Latimer's ZV Latimer, Inc. Wells Fargo Signature Cards	Admitted 2/6/17
Plaintiff	13	Zach Latimer's VVL, LLC Wells Fargo Signature Cards	Admitted 2/6/17
Plaintiff	15	Bankruptcy Court's Find of Fact and Conclusion of Law	Admitted 2/6/17
Defense	N	List of payroll deductions	Admitted 2/6/17

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

MICHAEL CLARKE and SUE CLARKE,
individually and as husband and wife,
Plaintiffs,

vs.

HOLLY LATIMER,
Defendant.

Case No. CV-OC-2015-21143

FINDINGS OF FACT & CONCLUSIONS
OF LAW FOLLOWING COURT TRIAL

THIS MATTER came before the Court on a court trial. Plaintiffs Michael and Sue Clarke (the “Clarkes”) obtained a multi-million dollar judgment against Defendant Holly Latimer’s husband, Zach Latimer. The Clarkes filed this action asserting that Mr. Latimer was fraudulently transferring his earnings from his employer to Holly Latimer to avoid paying the judgment. Having heard the testimony, reviewed the exhibits, and heard arguments of counsel, the Court issues the following findings of fact and conclusions of law.

FINDINGS OF FACT

(1) In 2010, the Clarkes sued Defendant Holly Latimer’s husband, Zach Latimer, for losing their retirement savings in a fraudulent investment scheme. On March 2, 2012, in Ada County Case Number CV-OC-2010-19701, the Clarkes obtained a multi-million dollar judgment against Zach Latimer.

- (2) The Clarkes recorded the judgment in Utah and started garnishing Zach Latimer's wages on August 10, 2012, from his employer, Vivint Solar. His wages have been continuously garnished from August 10, 2012, to the present, with the exception of January 3, 2014 to December 20, 2014.¹ The Latimers presently reside in Hawaii.
- (3) Zach Latimer formed two companies, ZV Latimer Investments, Inc. and VVL, LLC. He was the sole shareholder, officer, director, manager and/or member of each company and exercised exclusive control over each company. Although the name implies that at least one company was an investment company, there was no evidence that either company actually engaged in any legitimate business (i.e. there was no evidence of any tax returns, profit and loss statements, or any other document indicating that the companies actually did any business).
- (4) Zach Latimer opened Wells Fargo bank accounts for ZV Latimer Investments, Inc. and VVL, LLC, and exercised sole control over the bank accounts.
- (5) Zach Latimer directed his employer, Vivint Solar, to deposit his earnings into ZV Latimer Investments, Inc. and/or VVL, LLC's bank accounts. Pursuant to a Writ of Execution and Order of Continuing Garnishment, Vivint Solar would garnish 25% of Zach Latimer's wages before depositing the remaining 75% into the bank accounts. The exact dates and amounts were not itemized. There was evidence of inter-company bank transfers and also evidence

¹ Mr. Latimer declared bankruptcy in 2014, which halted the wage garnishments while the bankruptcy proceedings were pending.

that funds may have been deposited in the two companies' bank accounts from other sources. The exact source(s) and amount(s) of those funds is unclear.

(6) From time to time, Zach Latimer would transfer various sums from the company bank accounts into Holly Latimer's bank account.² Holly Latimer testified that the transfers were made on an as-needed basis, i.e. she would request money for family and household purposes and Zach Latimer would then transfer money into her account. Holly Latimer did not know or care to know exactly where the money came from, remaining in a state of deliberate ignorance. Although there was some extravagant spending, the money transferred to Holly Latimer was used for legitimate household and family purposes.

STANDARD OF REVIEW

It is the province of the district judge acting as trier of fact to weigh conflicting evidence and testimony and to judge the credibility of the witnesses. *Benninger v. Derifield*, 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006); I.R.C.P. 52(a). If the findings of fact are based on substantial evidence, even if the evidence is conflicting, they will not be overturned on appeal. *Id.* However, the trial court's conclusions of law are freely reviewed to determine whether the applicable law was correctly stated and whether the legal conclusions are sustained by the facts found. *Id.*

² The Clarkes contend that the total amount of these transfers exceed \$250,000 (Ex 10). The defense did not materially dispute the calculations.

ANALYSIS

The Clarkes assert that the deposit of Zach Latimer's wages into the company accounts and the subsequent transfer of funds to Holly Latimer constitute fraudulent transfers under Idaho's Fraudulent Transfers' Act, Idaho Code §§ 5-913 and 5-914. Holly Latimer asserts that there were no fraudulent transfers, because there was no "transfer" of an "asset," contending that post-garnished wages are exempt from execution under non-bankruptcy law.

Idaho Code § 5-913 provides in relevant part:

- (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - (a) With actual intent to hinder, delay, or defraud any creditor of the debtor[.]

The creditor (here, the Clarkes) has the burden of proving the elements of their claim by a preponderance of the evidence. I.C. § 55-914(3). Idaho Code § 5-913(2) lists factors the Court may consider in determining whether there was "actual intent to hinder, delay or defraud." Thus, under Idaho Code § 5-913, the Clarkes must prove by a preponderance of the evidence (1) Zach Latimer is indebted to the Clarkes, (2) the Clarkes' claim arose before or after the allegedly fraudulent transfers were made, (3) Zach Latimer made the transfers with the actual intent to hinder, delay or defraud, and (4) the total amount Holly Latimer received from Zach Latimer.

(1) The Court finds a transfer of an asset occurred.

The primary dispute in this case is whether the deposit of post-garnished wages into the apparent shell companies, and their subsequent transfer to Holly Latimer, meet the statutory definition of “transfers” of an “asset” under the Act.

Under the Act, “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an *asset* or an interest in an asset, and includes payment of money, release, lease, license and creation of a lien or other encumbrance.” (Emphasis added.) I.C. § 55-910(16). “Asset” is defined as “property of a debtor, but the term does not include . . . [p]roperty to the extent it is generally exempt under nonbankruptcy law.” I.C. § 55-910(2)(b).

[T]he maximum amount of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment shall not exceed (a) twenty-five per cent (25%) of his disposable earnings for that week, or (b) the amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C.A. 206(a)(1) in effect at the time the earnings are payable, whichever is less.

I.C. § 11-207(1). Defendant contends that Zach Latimer’s deposit of his wages into the company accounts were not “transfers” under the Act, and they did not lose their exempt status. Defendant cites to *Hooper* in support of this argument.

In *Hooper v. State*, 127 Idaho 945, 947, 908 P.2d 1252, 1254 (Ct. App. 1995), the trial court awarded costs to the State following the denial of Hooper’s two petitions for post-conviction relief. The State then sought execution of the judgment (for \$150) and Hooper filed a claim of exemption, which was denied. On appeal, the Court of Appeals addressed the issue of whether

the funds in Hooper's prison inmate account were exempt from execution. Hooper argued that Idaho Code § 11-207 limited the garnishment of his inmate account to 25% of his disposable earnings per week or to the amount by which his disposable earnings exceed 30 times the federal minimum hourly wage, whichever is less. The Court of Appeals stated:

There is authority that statutorily exempt wages do not lose their exempt status when deposited in a personal checking account, as long as the proceeds of the account are traceable to those wages.

...

There is authority that a deposit of exempt funds in a bank does not affect a debtor's exemption, nor change the exempt character of the fund, so long as the source of the exempt funds is reasonably traceable. If it is impossible to separate out exempt funds from nonexempt funds, the general rule is that an exemption cannot lie. This rule has been applied, though not without exception, to a deposit of exempt wages

Hooper v. State, 127 Idaho 945, 950–51, 908 P.2d 1252, 1257–58 (Ct. App. 1995) (citations omitted).

The Court of Appeals recognized that Hooper's inmate account was the functional equivalent of a personal checking account. On that basis, the Court acknowledged that Hooper's prison wages that were deposited into his inmate account *could* remain exempt so long as the proceeds in his account were traceable to those wages. However, because other funds were also deposited into the account, and Hooper failed to trace his wages, the Court of Appeals found that the inmate bank account was not exempt from execution.

Hooper thus supports Defendant's position that the post-garnished wages did not lose their exempt status when deposited into the two company accounts, because the company accounts were the functional equivalent of his personal accounts. However, the present case is also

distinguishable from *Hooper*, because the bank accounts into which the wages were deposited were company accounts, not personal checking accounts. The Latimers had personal accounts, in addition to the company accounts controlled by Zach Latimer.

The strong inference raised by the evidence is that the two companies that received Zach Latimer's wages were shell companies. There is no evidence that the companies conducted any business whatsoever, though one was entitled as an investment account, and may have been used to manage other investments. There is no evidence the companies ever filed any taxes and no tax returns were offered. No company books or records were offered. The reasonable inference is that Zach Latimer used the company accounts to try to hide assets from his creditors. Although Zach Latimer may have treated the accounts as personal accounts, Defendant cannot claim that Zach Latimer's company accounts were merely the functional equivalent of personal checking accounts akin to the inmate bank account in *Hooper*, when the strong inference is that he created the shell companies to hide assets.

The Court finds *Schultz v. Cadle Company*, 825 S.W.2d 151 (Tex. App. 1992), a case involving similar facts, to be more persuasive. In that case, a debtor formed a limited partnership (purportedly for estate planning purposes) into which he transferred numerous personal assets. The debtor also received a salary of \$23,000 a month from a company in which he owned a 50% interest. The debtor directed the company to deposit his monthly salary into the limited partnership's checking account. The court found that the debtor's voluntary transfer of his wages to his limited partnership caused the salary to lose its character as current wages and instead the salary simply became an asset owned by the limited partnership:

Schultz placed his wages to the Szulc, Lt'd account and, with respect to those wages, created the relationship of partner and partnership. Schultz's wages thereby lost their exempt status.

Schultz, as a shareholder and owner of the Clinic, had sufficient control over his wages to direct them to be transferred to Szulc, Lt'd. Consequently, once Schultz, a judgment debtor, directed that his wages be transferred to Szulc, Lt'd, they became "income" and lost their status as current wages.

Id. at 154.

Here, Zach Latimer directed his wages to be deposited into the bank accounts of the companies that he created. At that time, the wages became income of the company that owned the account into which the wages were deposited. As a matter of law, the law Zach Latimer hoped to rely upon, depositing his wages into the company accounts legally transferred ownership of the money and created income to the companies. Therefore, upon deposit into the company accounts, the wages lost their exempt status. However the funds remained as Zach Latimer's "assets" for purposes of the Unlawful Transfers Act, and he maintained exclusive ownership and control of the companies, and the company bank accounts. Accordingly, the Court finds that there was a "transfer" of an asset as defined by the Unlawful Transfers Act. Because the wages in the company bank accounts constituted assets, the Court also finds that there were transfers of assets from the company bank accounts to Holly Latimer.

(2) The transfers to Holly Latimer are voidable.

As previously stated, the Clarkes have the burden to show by a preponderance of the evidence that (1) Zach Latimer is indebted to the Clarkes, (2) the Clarkes' claim arose before or after the allegedly fraudulent transfers were made, (3) Zach Latimer made the transfers with the actual

intent to hinder, delay or defraud, and (4) the total amount Holly Latimer received from Zach Latimer.

Idaho Code § 5-913(2) lists factors the Court may consider in determining whether there was “actual intent to hinder, delay or defraud.” In this case, the Court finds that there are several factors that weigh in favor of finding actual intent to hinder, delay or defraud. The wages were transferred to “insiders,” including the company accounts and Holly Latimer. *See* I.C. § 55-910(8).³ It is undisputed that Zach Latimer retained exclusive control of the money transferred to the companies. He also exercised some sole control over the money that was transferred from the companies to Holly Latimer. *See* I.C. 55-913(2)(b). Zach Latimer was also sued before the transfers were made, which resulted in the multi-million dollar judgment. *See* I.C. 55-913(d).

In considering all the factors listed in Idaho Code § 55-913(2), the Court finds that Zach Latimer effectuated transfers to the two companies and subsequently to Holly Latimer with actual intent to hinder, delay or defraud the Clarkes. Based on a finding of actual intent, the Court need not consider whether Zach Latimer received a reasonably equivalent value in return for the transfers. *See* I.C. § 55-913, 55-914. Therefore, the transfers are voidable.

(3) Total amount unlawfully transferred.

At trial, the Clarkes introduced into evidence hundreds of pages of bank statements from VVL, LLC, ZV Latimer Investments, Inc. Holly Latimer’s Wells Fargo and Bank of Hawaii accounts

³ Defendant argues that VVL, LLC is not an “insider,” because limited liability companies are not included in the definition of “insider.” The Court agrees, however, whether a transfer was made to an “insider” is but one factor for the Court to consider in determining actual intent to hinder, delay, or defraud.

and Zach Latimer's Bank of Hawaii accounts. The Clarkes also prepared Exhibit 10, which lists every transfer or deposit made into Holly Latimer's Wells Fargo and Bank of Hawaii accounts from VVL, LLC or ZV Latimer Investments, Inc., from December 15, 2011 to January 11, 2017. The Clarkes contend that Exhibit 10 sets forth the total amount of fraudulent transfers, which totals \$252,868.41.

Neither party offered any specific evidence as to the exact amount(s) of Zach Latimer's wages that were deposited into the companies' bank accounts. There were no paycheck stubs or tax returns offered. Zach Latimer was not subpoenaed and did not appear at the trial. Although there was some suggestion that funds were transferred into the companies' accounts that were not from his wages, there was no clear proof as to how much, if any, nor the specific source. There was also some suggestion of inter-company transfers, but again, there was no clear proof as to how much, if any, nor the specific source. The Clarkes made a blanket assertion that every single transfer from VVL, LLC or ZV Latimer Investments, Inc. to Holly Latimer was a fraudulent transfer. The Defendant did not clearly or specifically dispute the amount of damages claimed, principally relying on the argument that there simply was no fraudulent transfer whatsoever (because all the funds originated from his post-garnished wages). It is not the Court's job to figure it out from the large volume of bank statements, from multiple accounts, covering multiple years, which were admitted into evidence.⁴

⁴See *In re Oberdick*, 490 B.R. 687, 704-05 (Bankr. W.D. Pa. 2013) (“[M]erely introducing a large volume of documents into evidence, without attempting to place them in a proper context or to provide the Court with some guidance as to what they mean, is not acceptable.”). See also *Scurtu v. Hosp. & Catering Mgmt. Servs.*, 2011 WL 521621, at *5 (S.D. Ala. Feb. 14, 2011) (rejecting a “Here are our documents, Judge. You figure it out” method of proving a case as “courts do not make a party’s arguments for it and do not scour uncited, aggregated exhibits to develop a persuasive factual recitation that the party itself neglected to articulate.”).

The Clarkes' premised their case (and their damages) on Zach Latimer depositing his wages into his two company bank accounts and then subsequently transferring those wages to his wife. Those wages constituted the "asset" that was unlawfully "transferred" pursuant to the Unlawful Transfers Act. The amount of the claimed damages was largely undisputed. Therefore, the Court finds, by a preponderance of the evidence, that the unlawful transfers amounted to \$252,868.41.

CONCLUSION

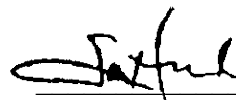
In sum, the Court finds that the Clarkes proved by a preponderance of the evidence that Zach Latimer made unlawful transfers of assets by directing his wages to be deposited into VVL, LLC and ZV Latimer Investments, Inc.'s bank accounts and then from those accounts to Holly Latimer. Therefore, the Court concludes that the Clarkes are entitled to recovery on their claim.

However, the Court finds the whole matter largely inconsequential. Zach Latimer was too smart by one-half. He could have deposited his post-garnished paychecks into his personal accounts, where the money would have retained its exempt status, and his wife could have lawfully used the money for household expenses just like she did. But he tried to defraud his creditors and hide his money by the deposits into the shell company accounts, where the money lost its exempt status, and then became a voidable transfer when he transferred money into his wife's account to pay household bills.

On the other hand, to the extent that the Clarkes obtain a judgment against Holly Latimer voiding the unlawful transfers and awarding a money judgment against her, then the new judgment against her would effectively partially satisfy the original judgment against her, to the extent and in the amount of the judgment against her. Since they both live off the same income and both are responsible (based on community property law) for both judgments,⁵ there seems to be no net gain or loss by either party, except in attorney fees and costs to argue a rather esoteric legal issue. The net effect is like rearranging the deck chairs on the Titanic. To that extent, there is no prevailing party and no costs or fees will be awarded.

Plaintiff shall submit a proposed final judgment that complies with Idaho Rule of Civil Procedure 54(a) within seven days of the date of this Order. Upon entry of the Judgment in this case, Plaintiffs should file a partial satisfaction of the judgment in the underlying case for the same amount.

IT IS SO ORDERED dated Signed: 3/16/2017 08:51 AM.



SAMUEL A. HOAGLAND
District Judge

⁵ Haw. Rev. Stat. Ann. § 510-8.

CERTIFICATE OF MAILING

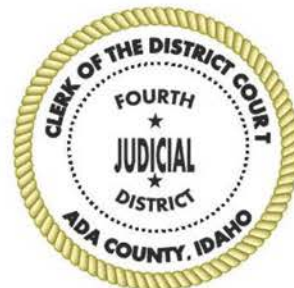
I hereby certify that on Signed: 3/17/2017 03:53 PM, I mailed (served) a true and correct copy of the within instrument to:

Mr. Eric Clark, *Esq.*
Clark & Associates, Attorneys
PO Box 2504
Eagle, ID 83616
eclark@ericclarkattorney.com

Mr. Brian Webb, *Esq.*
Brian Webb Legal
839 E. Winding Creek Dr., Ste. 102
Eagle, ID 83616
brian@brianwebblegal.com

Christopher Rich
Clerk of the District Court

By Stephanie Hardy
Deputy Court Clerk



FILED By: Stephanie Hardy Deputy Clerk
Fourth Judicial District, Ada County
CHRISTOPHER D. RICH, Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

MICHAEL CLARKE, and SUE CLARKE,
individually and as husband and wife,

Plaintiffs,

vs.

HOLLY LATIMER,

Defendant.

Case No. CV – OC 1521143

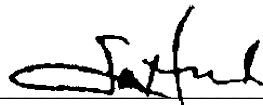
JUDGMENT

Judge Hoagland

JUDGMENT IS ENTERED AS FOLLOWS:

For the Plaintiffs and against the Defendant in the amount of TWO HUNDRED FIFTY- TWO THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS AND FORTY-ONE CENTS, \$252,868.41. Post judgment interest shall accrue on this amount at the lawful rate of 5.625%.

IT IS SO ORDERED Signed: 3/21/2017 05:55 PM _____.



SAMUEL A. HOAGLAND
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Signed: 3/27/2017 04:01 PM, I filed the foregoing document electronically through the Idaho iCourt e-filing system which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing:

ERIC R. CLARK, Esq.
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Stephanie Hardy

Deputy Clerk



ERIC R. CLARK, Esq.
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Idaho State Bar No. 4697

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael CLARKE, and Sue Clarke,
individually and as husband and wife,

Plaintiffs,

vs.

Holly LATIMER,

Defendant.

Case No. CV – OC 1521143

**PLAINTIFFS' MOTION FOR
PREJUDGMENT INTEREST**

Judge Hoagland

* * * * *

COME NOW the Plaintiffs, by and through counsel, and hereby file their Motion for Prejudgment Interest.

The Plaintiffs bring this Motion based on the *Uniform Voidable Transactions Act*, I.C. § 55-901, *et. sec.*, I.C. § 28-22-104(1)(1), and the case law cited in the accompanying Memorandum.

The Plaintiffs have also filed a Declaration to which they have attached their calculations of prejudgment interest due.

The Plaintiffs request a hearing and the opportunity to present oral argument.

DATED this 28th day of March, 2017.

CLARK & ASSOCIATES, ATTORNEYS

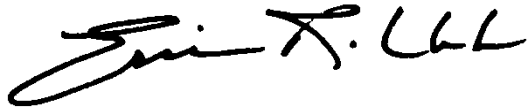


Eric R. Clark, For the Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of March, 2017, I filed the foregoing document electronically through the Idaho iCourt e-filing system which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing:

Brian L. Webb
Michael C. McClure
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Eric R. Clark

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Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
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Michael CLARKE, and Sue Clarke,
individually and as husband and wife,

Plaintiffs,

vs.

Holly LATIMER,

Defendant.

Case No. CV – OC 1521143

**DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PREJUDGMENT INTEREST**

I, Eric R. Clark, and upon personal knowledge of the facts and circumstances recited herein declares and states as follows:

1. That I am over the age of eighteen (18) years; and that I have personal knowledge of the facts set forth in this affidavit and am competent to testify to the same if called to do so.
2. That I am that attorney of record for the Plaintiffs.

3. Attached as Exhibit 1 is a matrix of are my calculations of prejudgment interest due and owing following each unlawful transfer.

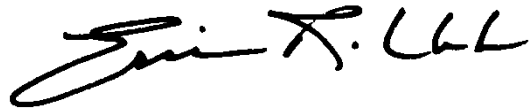
4. I obtained the transfer information from exhibits admitted into evidence at trial; specifically Plaintiffs' Exhibits 4, 5, 6, 7, 8, 9, and 11.

5. I calculated the interest due at 12% straight interest, not compounded.

5. The total due as of March 17, 2017 is \$81,619.32.

I declare under penalty of perjury under the laws of the State of Idaho and the laws of the United States, that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 28th day of March, 2017.

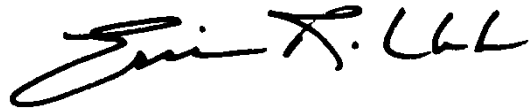


Eric R. Clark

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of March, 2017, I filed the foregoing document electronically through the Idaho iCourt e-filing system which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing:

Brian L. Webb
Michael C. McClure
BRIAN WEBB LEGAL
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616



Eric R. Clark

HOLLY LATIMER– PREJUDGMENT INTEREST DUE

Wells Fargo Accounts

Date	Amount	Number of Days	Per day amt.	Interest	Interest - Month	Interest - Year
2011						
12/15	250.00	1920	.082	\$157.73		
12/19	200	1915	.065	\$124.41		
12/28	200	1907	.065	\$123.89		406.03
2011 Total:	\$450					
2012						
1/3	1000	1901	.329	625.43		
1/23	200	1881	.065	122.27		
1/26	300	1878	.097	182.17		
1/30	800	1874	.263	492.86	1422.73	
2/13	40	1860	.013	24.17		
2/14	100	1859	.033	61.35		
2/17	500	1856	.164	304.38		
2/28	400	1845	.132	243.54	633.44	
3/7	670	1837	.220	404.14		
3/8	4500	1836	1.479	2714.44		
3/20	600	1824	.197	357.50	3476.08	
4/2	500	1811	.164	297.00		
4/5	870	1808	.286	462.85		
4/11	400	1802	.132	241.47		
4/11	350	1802	.115	207.23		
4/18	250	1795	.082	147.19		
4/23	1000	1790	.329	588.91		
4/24	1000	1789	.329	588.58		
4/27	350	1786	.115	295.39	2828.62	
5/10	200	1773	.065	115.25		
5/21	500	1762	.164	288.97		
5/25	1000	1758	.329	578.38	982.6	
6/4	1000	1748	.329	575.09		
6/19	1000	1733	.329	570.16		
6/28	500	1724	.164	282.74		
6/29	1000	1723	.329	566.87	1994.86	
7/5	1000	1717	.329	564.89		
7/13	1500	1709	.493	842.54		

7/20	1000	1702	.329	559.96		
7/31	1000	1691	.329	556.34	2523.73	
8/13	1000	1678	.329	552.06		
8/20	1000	1671	.329	549.76		
8/30	1000	1661	.329	546.47	1648.29	
9/13	1000	1647	.329	541.86		
9/21	1000	1639	.329	539.23		
9/27	1000	1633	.329	537.26	1618.35	
10/4	1000	1626	.329	534.95		
10/5	1000	1625	.329	534.63		
10/11	1000	1619	.329	532.65		
10/19	1000	1611	.329	530.02		
10/24	500	1606	.164	263.38	2395.63	
11/2	1000	1597	.329	525.41		
11/14	1000	1585	.329	521.47		
11/26	1000	1573	.329	517.52	1564.40	
12/3	1000	1566	.329	515.21		
12/12	1000	1557	.329	512.25		
12/24	1000	1545	.329	508.31	1535.77	
2012 Totals:	\$38,630					\$22,624.50
2013						
1/7	1000	1531	.329	503.70		
1/9	1000	1529	.329	503.04		
1/15	1000	1523	.329	501.07		
1/25	1000	1513	.329	497.78	2005.95	
2/6	1000	1501	.329	493.83		
2/15	1000	1492	.329	490.87		
2/25	1000	1482	.329	487.58		
2/28	1000	1479	.329	486.59	1958.87	
3/11	1000	1468	.329	483.97		
3/18	1000	1461	.329	489.67		
3/29	1000	1450	.329	477.05	1450.69	
4/1	1000	1447	.329	476.06		
4/4	1000	1444	.329	475.08		
4/17	1000	1431	.329	470.80		
4/24	1000	1424	.329	468.50		
4/26	10,000	1422	3.288	4675.54	6565.98	
6/10	1000	1377	.329	453.03		
6/12	1000	1375	.329	452.38	905.41	
7/2	5000	1355	1.644	2227.62		

7/2	1000	1355	.329	445.80	2673.42	
8/2	1000	1324	.329	435.60		
8/6	1000	1320	.329	434.28		
8/14	1000	1312	.329	431.65		
8/19	1000	1307	.329	430.00		
8/26	1000	1300	.329	427.70	2159.23	
9/3	1000	1292	.329	425.07		
9/9	1000	1286	.329	423.09		
9/12	1000	1283	.329	422.11		
9/20	250	1275	.082	104.55		
9/30	1000	1265	.329	416.19	1791.01	
10/1	125	1264	.041	51.82		
10/7	1000	1258	.329	413.88		
10/7	30	1258	.010	12.58		
10/10	1000	1255	.329	412.90		
10/16	2000	1249	.658	821.84		
10/28	2000	1237	.658	813.95	2527.97	
11/13	2000	1221	.658	803.42		
11/28	1200	1206	.395	476.37	1279.79	
12/2	700	1202	.230	276.46		
12/2	400	1202	.132	138.66		
12/6	1000	1198	.329	394.14		
12/10	1000	1194	.329	392.83		
12/20	400	1184	.132	156.29	1358.38	
2013 Totals:	\$55,105					\$24,682.70
2014						
1/3	2000	1170	.658	769.86		
1/13	2000	1160	.658	763.28		
1/30	2000	1143	.658	752.09	2285.23	
2/11	2000	1131	.658	746.17		
2/20	2000	1122	.658	738.28	1485.45	
3/11	1000	1103	.329	362.89		
3/28	1000	1086	.329	357.29	720.18	
4/3	1000	1080	.329	355.32		
4/22	2000	1061	.658	698.14	1053.46	
5/2	2000	1051	.658	691.56		
5/8	2000	1045	.658	687.61		
5/13	2000	1040	.658	684.32		
5/28	2000	1025	.658	674.45	2737.94	
6/4	585	1018	.192	195.46		

6/13	2000	1009	.658	663.92		
6/24	2000	998	.658	656.68	1516.06	
7/10	1000	982	.329	323.08		
7/14	2000	978	.658	643.52	966.60	
8/4	2000	957	.658	629.71		
8/6	2000	955	.658	628.39		
8/27	2000	934	.658	614.57	1872.67	
9/5	2000	925	.658	608.65		
9/15	2000	915	.658	602.07		
9/29	2000	901	.658	592.86	1803.58	
10/6	1000	894	.329	294.13		
10/8	1000	892	.329	293.47		
10/17	2000	883	.658	581.01		
11/3	2000	866	.658	569.83	1737.44	
12/1	300	838	.099	82.96		
12/8	1500	831	.493	409.68		
12/16	1000	823	.329	270.77		
12/30	400	809	.132	106.79	870.20	
2014 Totals:	\$51,785					\$17,048.81
2015						
1/5	2500	803	.821	659.26		
1/16	2500	792	.821	650.23	1309.49	
2/23	1000	754	.329	248.07	248.07	
3/12	1000	737	.329	242.47		
3/27	2000	722	.658	475.08	717.55	
4/14	2000	704	.658	463.23		
4/20	2000	688	.658	452.70	915.93	
5/18	2000	670	.658	440.86		
5/19	2500	669	.821	549.25		
5/20	2000	668	.658	439.54		
5/20	500	668	.164	109.55	1539.2	
6/8	2500	649	.821	532.83		
6/18	2500	639	.821	524.62		
6/29	101.41	628	.033	20.72	1078.17	
7/10	2500	617	.821	506.56		
7/31	1000	596	.329	196.08	702.64	
8/11	2500	585	.821	480.29		
8/12	1800	584	.591	345.14		
8/14	2500	582	.821	477.82	871.25	
9/8	1200	557	.395	220.02		

2015 totals:	\$36,501.41					\$7,382.30
WF Total:	\$182,471.41					

Bank of Hawaii Accounts:

Date	Amount	Number of days	Per day interest	Interest	Interest – Month	Interest – Year
2015						
1-5-15	15,300	803	5.030	4039.09	4039.09	
5-4-15	3,000	684	.986	674.42	674.42	
12-14-15	1000	460	.329	151.34		
12-15-15	1000	459	.329	151.01	302.35	
2015 totals:						\$5,015.86
2016						
1-4-16	600	439	.197	86.48		
1-7-16	500	436	.164	71.50		
1-12-16	1000	431	.329	141.80		
1-28-16	5000	415	1.644	682.26	882.04	
2-14-16	1000	398	.329	130.94	130.94	
3-7-16	8000	376	2.630	988.88		
3-30-16	1000	353	.329	116.14	1105.02	
5-5-16	400	317	.132	41.84		
5-6-16	10,000	316	3.288	1039.01		
5-31-16	1500	291	.493	143.46	1224.31	
6-20-16	1000	271	.329	89.16	89.16	
7-26-16	1440	235	.473	111.16	111.16	
8-01-16	3842	229	1.263	289.23		
8-19-16	515.00	211	.169	35.66	324.98	
9-6-16	1000	193	.329	63.50		
9-9-16	1000	190	.329	62.51		
9-19-16	3000	180	.986	177.48		
9-28-16	600	171	.197	33.69		
9-30-16	1000	169	.329	55.60	392.78	
10-11-16	1000	158	.329	51.98		
10-21-16	500	148	.164	24.27		
10-24-16	1000	145	.329	47.70	123.95	
11-8-16	1000	130	.329	42.77		
11-30-16	1200	108	.395	35.53	78.30	
12-09-16	1000	99	.329	32.57	32.57	

2016 totals:						\$4,459.21
2017						
1-3-17	1000	74	.329	24.35		
1-11-17	1000	66	.329	21.71	46.06	
Total:	\$70,397					81,619.32¹

¹ As of March 17, 2017

ERIC R. CLARK, Esq.
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Fax: 208-939-7136
Idaho State Bar No. 4697

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael CLARKE, and Sue Clarke,
individually and as husband and wife,

Plaintiffs,

vs.

Holly LATIMER,

Defendant.

Case No. CV – OC 1521143

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
PREJUDGMENT INTEREST**

Judge Hoagland

* * * * *

COME NOW the Plaintiffs, by and through counsel, and hereby file their Memorandum in Support of Plaintiffs' Motion for Prejudgment Interest.

ARGUMENT

Plaintiffs are entitled to recover prejudgment interest calculated after each unlawful transfer.

The Court correctly ruled that each transfer that Latimer made to his wife was made with the actual intent to hinder, delay, or defraud the Clarke's. The Clarke's have attached a matrix as Exhibit 1 to the Declaration filed in support of this motion, which shows the date and amount of the unlawful transfers to Holly, and the calculations of accumulated interest following each transfer.

While the *Uniform Voidable Transactions Act*, I.C. § 55-901, *et. sec.*, does not specifically address prejudgment interest, it does identify broad authority to grant relief; “...(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure: . . .3. any other relief the circumstances may require.” I.C. § 55-916(1)(c)(3).

As confirmed in Clarke’s Exhibit 1, the Clarke’s damages for Holly Latimer’s participation in the fraudulent transfers were “readily ascertainable by mathematical process.” *Ross v. Ross*, 145 Idaho 274, 279-80, 178 P.3d 639,642-42 (Ct. App., 2007). Moreover, this case involves a claim for money due following a judgment, which was unlawfully transferred to avoid a creditor’s claim. Accordingly, if involves a claim for money after that money became due. See, I.C. § 28-22-104(1)(1).

Additionally, in *Ross v. Ross*, 145 Idaho 274, 178 P.3d 639 (Ct. App., 2007), the Idaho Court of Appeals addressed the equitable nature of an award of prejudgment interest, especially when the party receiving the funds was unjustly enriched.

Idaho statutory law, Idaho Code § 28-22-104, calls for the award of prejudgment interest on certain types of money claims, and case law likewise calls for prejudgment interest on damages awarded for unjust enrichment. *Jones v. Whiteley*, 112 Idaho 886, 889, 736 P.2d 1340, 1343 (Ct.App. 1987).

Ross v. Ross, 145 Idaho 274, 279-80, 178 P.3d 639,642-42 (Ct. App., 2007).

Idaho’s *Uniform Voidable Transactions Act* is remedial litigation designed to provide broad relief to creditors otherwise deprived of money or property to which they are lawfully entitled. “It is a well-known canon of statutory construction that remedial legislation is to be liberally construed to give effect to the intent of the legislature.” *State By and Through Alan G. Lance v. Hobby Horse Ranch Tractor and Equip. Co.*, 129 Idaho 565, 567, 929 P.2d 741, 743 (1996) (citing NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 60.01 at 147 (5th ed.1992)). As the *Uniform Voidable Transactions Act* must be construed broadly and affords the trial court authority to fashion equitable remedies and prejudgment interest was “readily ascertainable” as each fraudulent transfer was a specific amount proven at trial, the Court should grant this motion and award prejudgment interest to the Clarke’s.

CONCLUSION

Based on the Court's Findings of Facts and the applicable law, the Clarke's respectfully request the Court grant their Motion for Prejudgment Interest in its entirety and add an additional \$81,619.32 in accumulated prejudgment interest to the judgment entered on March 21, 2017.

DATED this 28th day of March, 2017.

CLARK & ASSOCIATES, ATTORNEYS




Eric R. Clark, For the Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of March, 2017, I filed the foregoing document electronically through the Idaho iCourt e-filing system which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing:

Brian L. Webb
Michael C. McClure
BRIAN WEBB LEGAL
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616



Eric R. Clark

ERIC R. CLARK, Esq.
CLARK & ASSOCIATES, ATTORNEYS
P.O. Box 2504
Eagle, ID 83616
Office: 208-830-8084
Fax: 208-939-7136
Idaho State Bar No. 4697

APR 10 2017

CHRISTOPHER D. RICH, Clerk
By AUSTIN LOWE
DEPUTY

Attorney for Plaintiffs-Appellants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael CLARKE, and Sue Clarke,
individually and as husband and wife,

Case No. CV – OC 1521143

PLAINTIFFS' NOTICE OF APPEAL

Plaintiffs-Appellants,

vs.

Judge Hoagland

Holly LATIMER,

Defendant-Respondent.

TO: THE ABOVE NAMED RESPONDENT, HOLLY LATIMER, AND THE PARTY'S ATTORNEYS, BRIAN L. WEBB AND MICHAEL C. MCCLURE OF THE LAW OFFICES OF BRIAN WEBB LEGAL AND THE CLERK OF THE ABOVE-ENTITLED COURT .

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Michael And Sue Clarke, appeal against the above-named respondent to the Idaho Supreme Court from the Findings of Facts and Conclusions of Law entered on March 16, 2017 and the final judgment entered on March 21, 2017, the Honorable Judge Samuel Hoagland presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.



3. A preliminary statement of the issues on appeal:

- a. Whether the District Court erred when it ruled the Appellants were not the prevailing party when the Appellants prevailed on their only claim and were awarded every penny of the the over \$250,000.00 they sought at trial, and the Defendants were denied all proffered affirmative defenses?
- b. Whether the District Court erred when it Ordered the Plaintiffs to file a satisfaction of judgment although the Plaintiffs had not received any money from the Defendant to satisfy any judgment?
- c. Whether the Appellants were entitled to recover their costs and attorney fees below?
- d. Whether the Appellants are entitled to recover their costs and attorney fees on appeal.

4. No portion of the record has been sealed.

5. No reporter's transcript is requested.

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.

None.

7. I certify:

1. That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
2. That the appellate filing fee has been paid.
3. That service has been made upon all parties required to be served pursuant to Rule 20, IAR.

DATED THIS 10th day of April, 2017.

CLARK & ASSOCIATES, ATTORNEYS



Eric R. Clark, for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2017, I served the foregoing document via U.S. Mail, postage prepaid to:

Brian L. Webb
Michael C. McClure
BRIAN WEBB LEGAL
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616



Eric R. Clark

APR 27 2017

CHRISTOPHER D. RICH, Clerk
By AMANDA PARKER
DEPUTY

ERIC R. CLARK, Esq.
CLARK & ASSOCIATES, ATTORNEYS
P.O. Box 2504
Eagle, ID 83616
Office: 208-830-8084
Fax: 208-939-7136
Idaho State Bar No. 4697

Attorney for Plaintiffs-Appellants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael CLARKE, and Sue Clarke,
individually and as husband and wife,

Plaintiffs-Appellants,

vs.

Holly LATIMER,

Defendant-Respondent.

Case No. CV – OC 1521143

**PLAINTIFFS' AMENDED NOTICE
OF APPEAL**

Judge Hoagland

TO: THE ABOVE NAMED RESPONDENT, HOLLY LATIMER, AND THE PARTY'S ATTORNEYS, BRIAN L. WEBB AND MICHAEL C. MCCLURE OF THE LAW OFFICES OF BRIAN WEBB LEGAL AND THE CLERK OF THE ABOVE-ENTITLED COURT .

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Michael And Sue Clarke, appeal against the above-named respondent to the Idaho Supreme Court from the Findings of Facts and Conclusions of Law entered on March 16, 2017 and the final judgment entered on March 21, 2017, the Honorable Judge Samuel Hoagland presiding. The Appellants now also appeal from the Court's oral order stated on the record on April 26, 2017 denying Appellants' Motion for Prejudgment Interest.



2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal:

- a. Whether the District Court erred when it ruled the Appellants were not the prevailing party when the Appellants prevailed on their only claim and were awarded every penny of the the over \$250,000.00 they sought at trial, and the Defendants were denied all proffered affirmative defenses?
- b. Whether the District Court erred when it Ordered the Plaintiffs to file a satisfaction of judgment although the Plaintiffs had not received any money from the Defendant to satisfy any judgment?
- c. Whether the District Court erred when it denied Plaintiffs' Motion for Prejudgment Interest.
- d. Whether the Appellants were entitled to recover their costs and attorney fees below?
- e. Whether the Appellants are entitled to recover their costs and attorney fees on appeal.

4. No portion of the record has been sealed.

5. The Appellants request a transcript of the April 26, 2017 Motion for Prejudgment Interest Hearing.

6. The appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R.

1. Plaintiffs' Motion for Prejudgment Interest
2. Plaintiffs' Memorandum in Support of Motion for Prejudgment Interest
3. Plaintiffs' Declaration filed in Support of Motion for Prejudgment Interest
4. Plaintiffs' Notice of Filing Partial Satisfaction and Notice of Objection and Protest

7. I certify:

1. That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
2. The Appellants have paid the the estimated fee for preparation of the transcript of the April 26, 2017 hearing.

3. That the appellate filing fee has been paid.
4. That service has been made upon all parties required to be served pursuant to Rule 20, IAR.

DATED THIS 27th day of April, 2017.

CLARK & ASSOCIATES, ATTORNEYS



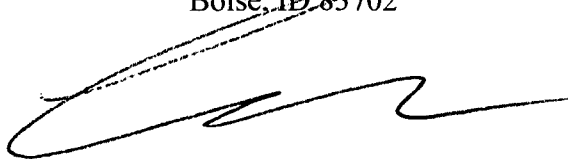
Eric R. Clark, for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of April, 2017, I served the foregoing document via U.S. Mail, postage prepaid to:

Brian L. Webb
Michael C. McClure
BRIAN WEBB LEGAL
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616

Christine Olesek
Court Reporter to Judge Hoagland
Chambers Room 5113
Ada County Courthouse
200 W. Front St.
Boise, ID 83702



Eric R. Clark

ERIC R. CLARK, Esq.
CLARK & ASSOCIATES, ATTORNEYS
P.O. Box 2504
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Fax: 208-939-7136
Idaho State Bar No. 4697

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael CLARKE, and Sue Clarke,
individually and as husband and wife,

Plaintiffs,

vs.

Holly LATIMER,

Defendant.

Case No. CV – OC 1521143

**PLAINTIFFS' NOTICE OF FILING
PARTIAL SATISFACTION OF
JUDGMENT AND NOTICE OF
OBJECTION AND PROTEST**

Judge Hoagland

* * * * *

COME NOW the Plaintiffs, by and through counsel, and hereby give notice that they have complied with the Court's order directing the Plaintiffs to file a partial satisfaction of judgment in *Clarke et al v. Latimer et al*, Ada County Case No. CV OC 1019701, notwithstanding Clarke's have received no payment from Holly Latimer. Additionally, while complying with the Order the Plaintiffs' also file their Objection to the Court's order to memorialize their ongoing objection to this Order pending appeal.

NOTICE OF FILING

The Plaintiffs hereby give notice to Judge Hoagland that they are complying with the Court's order and have filed the attached Notice of Partial Satisfaction of Judgment as ORDERED.

NOTICE OF OBJECTION AND PROTEST

The Plaintiffs also hereby give notice that they believe the Order directing the Plaintiffs to file the attached Notice of Partial Satisfaction of Judgment is illegal and a usurpation of the Court's authority and are now complying due to the Court's threats communicated to Clarke's counsel on April 26, 2017.

Holly Latimer has not paid a dime towards the Judgment this Court entered in this case, and accordingly, she is not entitled to any satisfaction of judgment in this case or in any other case. The Court therefor has ordered a partial satisfaction of judgment entered when the Clarke's have received no money from anyone, which the Clarke's believe is not only inequitable, it is illegal.

Idaho Rules of Civil Procedure Rule 58.1. Satisfaction of Judgment.

- (a) **Required on Full Payment.** Upon full payment of a judgment, the party in whose favor the judgment was rendered must:
- (1) file a satisfaction of judgment in the court in which the judgment was entered; and
 - (2) record it in every county where the judgment or abstract of the judgment is recorded.
- (b) **Signature Required.** A satisfaction of judgment must be signed by the party in whose favor the judgment was entered or the party's attorney.

Based on IRCP 58.1 only upon receipt of payment for Holly's entire judgment would the Clarke's be required to file a satisfaction of judgment in this case. Then assuming the Court's theory that "it is all the same money" is valid, if and when the Clarke's receive any money from Holly, then and only then, Latimer may be entitled to an offset of the monies Holly as paid to reduce his judgment.

Effectively, the Court's illegal order amounts to an unauthorized reduction of a judgment of nearly a quarter of a million dollars in a case in which this Court has no jurisdiction or authority; and again, when the Clarke's have received no money to justify ordering satisfaction of judgment in any case.

The Clarke's concede that if the Court's order stated that upon receipt of funds from Holly Latimer in an amount satisfying her judgment to the Clarke's then the Clarke's must file a partial satisfaction of judgment in *Clarke et al v. Latimer et al*, Ada County Case No. CV OC

1019701 then it would likely be a valid order. However, ordering the Clarke's to file any satisfaction of judgment in *Clarke et al v. Latimer et al*, Ada County Case No. CV OC 1019701, or in any case, when they have not received money to satisfy any judgment is unfounded and illegal. However, out of respect for the Court's authority, the Clarke's have complied as ordered and will proceed with their appeal.

DATED this 27th day of April, 2017.

CLARK & ASSOCIATES, ATTORNEYS

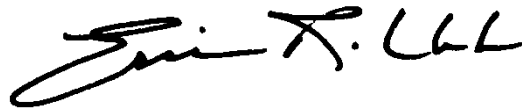


Eric R. Clark, For the Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of April, 2017, I filed the foregoing document electronically through the Idaho iCourt e-filing system which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing:

Brian L. Webb
Michael C. McClure
BRIAN WEBB LEGAL
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616



Eric R. Clark

ERIC R. CLARK, Esq.
CLARK & ASSOCIATES, ATTORNEYS
P.O. Box 2504
Eagle, ID 83616
Office: 208-830-8084
Fax: 208-939-7136
Idaho State Bar No. 4697

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Michael Clarke, and Sue Clarke, individually
and as husband and wife,

Plaintiffs,

vs.

Zach Latimer, an individual; et al.

Defendants.

Case No. CV OC 10-19701

**NOTICE OF PARTIAL
SATISFACTION OF JUDGMENT**

Pursuant to the Court's order in *Clarke et al. v. Holly Latimer*, Ada County Case No. CV OC 15-21143, Plaintiffs file this *Notice of Partial Satisfaction of Judgment* in the amount of \$252,868.41 on the Judgment rendered in the above-captioned proceeding on the 2nd day of March 2012, notwithstanding they have not received \$252,868.41.

DATED this 27th day of April, 2017.

CLARK & ASSOCIATES, ATTORNEYS

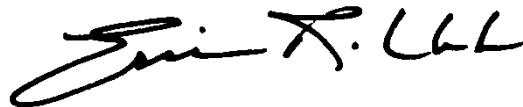


Eric R. Clark, For the Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of April, 2017, I filed the foregoing document electronically through the Idaho iCourt e-filing system which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic filing:

Zach Latimer
91-1183 Waipuhia St.
Ewa Beach, HI 96706
zvlattimer@gmail.com



Eric R. Clark

Brian L. Webb (7448)
brian@brianwebblegal.com
Michael C. McClure (8439)
mike@brianwebblegal.com
BRIAN WEBB LEGAL
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616
Telephone: (208) 331-9393
Facsimile: (208) 331-9009

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

MICHAEL CLARKE, and SUE CLARKE,
individually and as husband and wife,

Plaintiffs,

vs.

HOLLY LATIMER,

Defendant.

Case No. CV OC 15-21143

**MOTION TO AUGMENT
THE RECORD**


The Defendant, Holly Latimer, by and through her attorney of record, Brian Webb Legal, moves this Court pursuant to Idaho Rules of Civil Procedure Rule 84(l) and Idaho Appellate Rule 30, for an order augmenting the record in the above-entitled matter with:

A copy of the transcript of the hearing held on April 26, 2017 on *Plaintiffs' Motion for Prejudgment Interest*. At the close of the hearing, Plaintiffs' counsel requested a transcript of the hearing. It is believed that a transcript has been made.

The purpose of this motion is to augment the record to include the Court's additional reasoning in support of the *Findings of Fact and Conclusions of Law Following Court Trial* and the order that the Plaintiffs file a Partial Satisfaction of Judgment in the underlying case, *Michael Clarke, et al. v. Zach Latimer, et al.*, Ada County Case No. CV OC 10-19701.

Oral argument is requested only if the Court deems it necessary.

DATED THIS 2ND day of May 2017.


MICHAEL C. MCCLURE
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2ND day of May, 2017, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to those parties marked served below:

Counsel for Plaintiffs
Eric R. Clark
CLARK & ASSOCIATES
PO Box 2504
Eagle, ID 83616
Fax: 208-939-7136
E-mail: eclark@ericrclarkattorney.com

- Hand Delivered
- U.S. Mail
- Fax
- Email


Michael C. McClure

FILED By: Stephanie Hardy Deputy Clerk
Fourth Judicial District, Ada County
CHRISTOPHER D. RICH, Clerk

Brian L. Webb (7448)
brian@brianwebblegal.com
Michael C. McClure (8439)
mike@brianwebblegal.com
Brian Webb Legal
839 E. Winding Creek Dr. Ste. 102
Eagle, Idaho 83616
Telephone: (208) 331-9393
Facsimile: (208) 331-9009

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

MICHAEL CLARKE, and SUE CLARKE,
individually and as husband and wife,

Plaintiffs,

vs.

HOLLY LATIMER,

Defendant.

Case No. CV OC 15-21143

**ORDER GRANTING MOTION
TO AUGMENT THE RECORD**

The Defendant's *Motion to Augment the Record* having come before this Court, and good cause appearing,

IT IS HEREBY ORDERED that the Defendant's *Motion to Augment the Record* is GRANTED.

DATED this ____ day of May, 2017.

Signed: 5/16/2017 02:16 PM



JUDGE HOAGLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 2017, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to those parties marked served below:

Counsel for Plaintiffs
Eric R. Clark
CLARK & ASSOCIATES
PO Box 2504
Eagle, ID 83616
E-mail: eclark@ericclarkattorney.com

- Hand Delivered
- U.S. Mail
- Fax Transmittal
- Email

Counsel for Defendant
Michael C. McClure
Brian Webb Legal
839 E. Winding Creek Dr., Ste 102
Eagle, ID 83616
Email: mike@brianwebblegal.com

- Hand Delivered
- U.S. Mail
- Fax Transmittal
- Email

Stephanie Hardy
Deputy Clerk



NO. _____
A.M. _____ FILED P.M. 1:15

JUN 13 2017

CHRISTOPHER D. RICH, Clerk
By KELLE WEGENER
DEPUTY

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To: Clerk of the Court
Idaho Supreme Court
451 West State Street
(208) 334-2616

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 45012

_____)
MICHAEL CLARKE and SUE CLARKE,)
individually and as husband and)
wife,)
Plaintiffs-Appellants,)
vs.)
HOLLY LAITMER,)
Defendant-Respondent.)
_____)

NOTICE OF TRANSCRIPT OF 18 PAGES LODGED

Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for the County of
Ada.
Honorable Samuel A. Hoagland, District Court Judge

Volume One contains:
Motion for Prejudgement Interest hearing held
on April 26, 2017.

Date: May 23, 2017

Christine A. Olesek, RPR

Christine Anne Olesek, RPR
Official Court Reporter,
Judge Samuel A. Hoagland
Idaho Certified Shorthand Reporter No. SRL-1044
Registered Professional Reporter

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

MICHAEL CLARKE and SUE CLARKE,
individually and as husband and wife;

Plaintiffs-Appellants,

vs.

HOLLY LATIMER,

Defendant-Respondent.

Supreme Court Case No. 45012

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits offered during the court trial of this matter. It should be noted that exhibits were not requested in the Notice of Appeal or in the Amended Notice of Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 13th day of June, 2017.

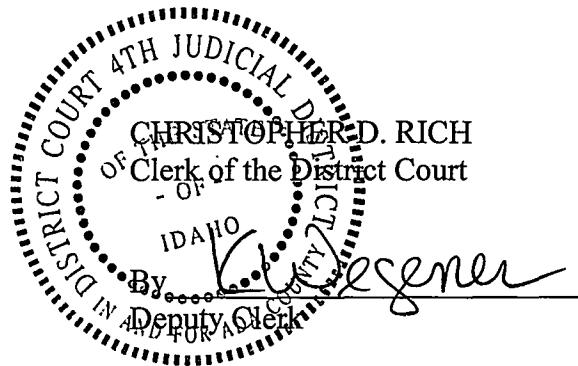


EXHIBIT LIST

Samuel A. Hoagland/ Stephanie Hardy
Judge Clerk

DATE: February 6, 2017 DISPOSITION: Court Trial
CASE NO. CV-OC-2015-21143

Michael Clarke	Eric Clark
Sue Clarke	
Plaintiff	Attorney(s)

vs.

Holly Latimer	Brian Webb
	Mike McClure
Defendant	Attorney(s)

BY	NO.	DESCRIPTION	STATUS
Plaintiff	1	Judgment against Zach Latimer	Admitted 2/6/17
Plaintiff	2	IDOF's Default Judgment	Admitted 2/6/17
Plaintiff	3	Hawaii Bankruptcy Court Judgment 1 & 2	Admitted 2/6/17
Plaintiff	4	Zach Latimer's VVL, LLC Monthly Statements	Admitted 2/6/17
Plaintiff	5	Zach Latimer's Z.V. Latimer, Inc. Monthly statements	Admitted 2/6/17
Plaintiff	6	Zach Latimer's Bank of Hawaii Monthly Statements	Admitted 2/6/17
Plaintiff	7	Holly Latimer's Wells Fargo Monthly Statement #1325	Admitted 2/6/17
Plaintiff	8	Holly Latimer's Wells Fargo Monthly Statement #3886	Admitted 2/6/17
Plaintiff	9	Holly Latimer's Bank of Hawaii monthly statements	Admitted 2/6/17
Plaintiff	10	Exhibit showing Transfers and Amount	Illustrative 2/6/17
Plaintiff	11	Hawaii Credit Union Statements	Admitted 2/6/17
Plaintiff	12	Zach Latimer's ZV Latimer, Inc. Wells Fargo Signature Cards	Admitted 2/6/17
Plaintiff	13	Zach Latimer's VVL, LLC Wells Fargo Signature Cards	Admitted 2/6/17
Plaintiff	15	Bankruptcy Court's Find of Fact and Conclusion of Law	Admitted 2/6/17
Defense	N	List of payroll deductions	Admitted 2/6/17

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

MICHAEL CLARKE and SUE CLARKE,
individually and as husband and wife;

Plaintiffs-Appellants,

vs.

HOLLY LATIMER,

Defendant-Respondent.

Supreme Court Case No. 45012

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 10th day of April 2017.

